Advisory Action *Before the Filing of an Appeal Brief*	Application No.	Applicant(s)
	10/562,046	KRUSE ET AL.
	Examiner	Art Unit
	JEFFREY NICKERSON	2442

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>10 June 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>10 June 2009</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>21,22 and 24-36</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /Andrew Caldwell/
  Supervisory Patent Examiner, Art Unit 2442

Continuation of 11. does NOT place the application in condition for allowance because:

Drawing Objection:
Applicant is reminded that the practice of proposing drawing changes has been discontinued. It does appear, however, that if the changes indicated were filed as compliant replacement drawings, the outstanding objection to the drawings would be overcome.

Response to Arguments:
Independent claims 21 and 27…
Applicant argues the combined teachings of Barker (US 6,363,421), Panikatt (US 6,349,333), and Kampe (US 2002/0016867) fail to teach several limitations found within these independent claims. Specifically, applicant argues that the "client applications" and "client event service" are entirely different things and therefore can not be both java applets, and, therefore, the combined teachings fail to render obvious the following: "logging possible events in a client event service for the purpose of intializing or updating the client".

The examiner respectfully disagrees. The examiner would like to note that applicant's "client applications", "client event service", "server event service", etc, are all software components claimed with specific functionality. Therefore, any combination of software that performs the claimed functionality is deemed equivalent to the claimed software. For instance, a reference disclosing software that logs possible events for the purpose of initializing or updating a client provides for the claimed "client event service", because this is the claimed functionality. As such, the examiner maintains that Barker discloses utilizing a combination of software components (Java applets, various interface architectures, such as CORBA, etc) that do, in fact, perform the claimed functionality. The examiner has included a document incorporated by reference with Barker (see col 6, line 54 - col 7, line 30) that discloses the basic functionality of CORBA. Barker discloses an entire client side interface that allows clients to register for notifications of network events (Barker: col 7, lines 38-67). Further client side components can be seen in col 5, lines 1-23. The incorporated CORBA document (herein Vinoski) discloses basic features that aid in understanding the rationale of rejection. See Vinoski: sections 3.0, 4.0, 5.0, and 6.0 for fundamental CORBA concepts, upon which Barker's EMAPI is built. The examiner maintains that Java applets (or other client software) that allow the client to set up network event alarm notifications and register them with the server, USING CORBA, provides for the above-argued limitation.

Applicant further argues the various components of Barker's EMS server are not equivalent to the claimed "server event service", and, therefore, the combined teachings fail to render obvious the following: "logging possible events in a server event service for the purpose of initializing or updating the server".

The examiner respectfully disagrees. As indicated above, software components that perform the equivalent claimed functionality are deemed equivalent. Various combined components of Barker's EMS server performed the recited functionality as indicated and cited in the Final Rejection dated 10 December 2008 and Advisory action dated 27 May 2009.

The examiner would also like to indicate that a significant portion nof applicant's arguments uitliize rationale based on limitations (such as the client application not communicating with the server) that is not found within the claim language. These arguments are not being addressed.

Applicant further argues the combined teachings fail to render obvious the following: "wherein the client application logs a client callback function in the client event service for every event about which it is to be notified".

The examiner respectfully disagrees. Barker teaches wherein the client application registers for every event about which it is to be notified (Barker: col 7, lines 37-67), and wherein the registering comprises logging in the client event service (Barker: col 7, lines 37-67; col 8, line 58 - col 9, line 8; See also Vinoski cited above) and utilizing callback functions (Barker: Figure 6). Therefore, the combined teachings provide for the above-argued limitation.

Applicant's arguments are ultimately unpersuasive, and, therefore, the rejections are hereby maintained.